TANG CHIOK SING v. LIAN FATT SAWMILL CO.

[F.C. (Suffian L.P., Lee Hun Hoe C.J. (Borneo) and Wan Suleiman F.J.) August 24, 1976]

[Kuching — Federal Court Civil Appeal No. 136 of 1975]

Contract — Agent — Commission — Agreement made with agent for payment of commission for getting Korean concern to enter into contract for extraction of timber — Contract with Korean concern entered into by limited company incorporated by partners of firm.

The appellants had claimed commission against the respondents under an agreement by which the respondents agreed to pay the appellant commission, entertainment and service fees if the appellant was successful in getting a Korean concern, Shin Fung (Borneo) Co. to enter into a contract to extract and purchase timber from a concession area. The respondent firm had become defunct and the partners of the firm incorporated a limited company, the Lian Fatt Sawmill Co. Ltd. to work in the concession area. Forest licences which had been issued to the firm were renewed in the name of the company. The company entered into the agreement with the Korean concern for the extraction and sale of timber in the concession area. The appellant claimed commission under the agreement with the firm. His claim was dismissed in the High Court and he appealed to the Federal Court.

Held, allowing the appeal: (1) once the appellant had brought the parties together he was entitled to his commission and it did not matter that in fact the Korean concern made the contract with the limited company and not the firm as the persons in control of the partnership and the limited company were the same;

(2) the respondents were taking advantage of a device to try to evade payment of commission. Such a device should not be allowed to defeat the claim of an innocent party. Under the circumstances it would be inequitable for the partnership to refuse to pay commission.

Cases referred to:-

(1) *Hock Hin (Muar) Rubber Co. Sdn. Bhd.* v. *Malaya Insurance Co. Incorporated* K.L. Civil Suit No. 980 of 1974.

(2) *Thomas W. Rhodes* v. *George P. Forwood* and *Walter Paton* (1875-76) 1 App. Cas. 256.

(3) *Turner* v. *Goldsmith* [1891] 1 Q.B. 544.

(4) *Luxor (Eastborne) Ltd. & Ors.* v. *Cooper* [1941] 1 A.C. 108, 124.

(5) *Midgley Estates Ltd.* v. *Hand* [1952] 2 Q.B. 432.

(6) *Ackroyd & Sons* v. *Hasan* [1960] 2 Q.B. 144.

(7) *A.L. Wilkinson Ltd.* v. *Brown* [1966] 1 W.L.R. 194.

(8) *Jaques* v. *Lloyd D. George and Partners Ltd.* [1968] 1 W.L.R. 625.

(9) *Reigate* v. *Union Manufacturing Company (Ramsbottom)* [1918] 1 K.B. 592, 605.

FEDERAL COURT.

Joseph C.C. Tang for the appellant.

S. Sahathevan for the respondent.

Lee Hun Hoe C.J. (Borneo): This is an appeal against the dismissal by the learned judge on a retrial of a claim for damages with costs. The action was earlier dismissed with costs by the learned judge on November 6, 1972. This court dismissed the appeal on March 13, 1973 but made an order remitting the case back to the High Court for retrial on the issue of damages for breach of contract as pleaded in paragraph 15 of the amended statement of claim.

Paragraph 15 reads: —

"15. Further and in the alternative the plaintiff says:—

(a) It was expressly and/or impliedly provided by the agreement that in the event of the plaintiff being successful in procuring Shin Fung (Borneo) Company to enter into an agreement with the defendant firm to extract and purchase timber in forest area covered by Licence No. T/0015, the plaintiff should thereon become entitled to his service and entertainment fees and his commission as stated in the said agreement for a period of ten years or until the total production of logs up to fifty thousand tons or alternatively that the defendant firm should not by any default on his part after the plaintiff's work as referred to in paragraph 5 herein was complete deprive the plaintiff of the said commission and entertainment and service fees for a period of ten years from the signing of the said agreement or alternatively that the defendant firm impliedly agreed not to do anything which would prevent the plaintiff from earning his commission and entertainment and service fees for a period of ten years.

(b) On or about the year 1965 the defendant firm assigned all their rights and interest and together with all the interests under the said Chinese Agreement dated June 29, 1962 made with the said Company to one Lin Fatt Co. (Ltd) Miri another company owned by the partners of the defendant firm or Alternatively —

(c) To some third parties further and better particulars whereof the plaintiff is unable without discovery to furnish."

By paragraph 9 of the defence respondents/defendants denied the claim and put appellant/plaintiff to strict proof of his claim. At the retrial parties agreed to be bound by the previous record and relied on submissions on relevant points of law. During the course of the hearing plaintiff abandoned his claim relating to entertainment and service fees. He claimed as commission a sum of $21,866.96.

Plaintiff is a broker, commission agent, timber agent and general merchant. Defendants are a timber firm. Both carry on business in Miri, Sarawak. By an agreement (Exhibit P1) made on June 29, 1962 defendants agreed to pay plaintiff commission, entertainment and service fees if plaintiff was successful in getting a Korean concern, Shin Fung (Borneo) Co. (referred to as SF (B) Co.) to enter into a contract to extract and purchase timber from the concession area covered by Forest Licence No. T/0015.

Clauses 1 and 2 of the agreement (Exhibit P1) provide that: —

"1. The partners/shareholders of Lian Fatt Sawmill willingly agree to pay commission to Mr. Tang Chiok Sing for Tang Chiok Sing's assistance/help to Lian Fatt Sawmill Co. and Shin Fung (Borneo) Co. of Miri in the making of a contract for the production/extraction of logs in forest under Licence T/0015 and the purchase and sale of logs and the profit/benefit derived therein.

2. Party 'A' willingly agrees to give Party 'B' commission of 5% of the total benefits and profits derived by Party 'A' from the contract signed between Party 'A' and Shin Fung Company."

The said agreement was to be valid for ten years or until the production of logs reached 50,000 tons. Subsequently, on July 10, 1962 defendants and SF (B) Co. executed an agreement (Exhibit P2) for the extraction and purchase of timber in the said area.

In 1963 the Forest Department, in carrying out the policy of the State Government, issued a circular requesting all forest licencees to form into limited liability companies and forest licences would then be issued to those companies incorporated under the Sarawak Companies Ordinance (Cap. 65). In 1965 defendant firm became defunct though not formally dissolved in accordance with the provisions of the Business Names Ordinance (Cap. 66). However, its

forest licence No. T/0015 did not expire until December 31, 1965. On April 27, 1965 Lin Fatt Sawmill Co. Ltd. (referred to as LFS Co. Ltd.) was incorporated by partners of defendant firm. The same persons controlling LFS Co. Ltd. also controlled defendant firm. Forest licence to work in the same concession area granted to defendant firm was only issued to LFS Co. Ltd. as from January 1, 1966. However, on June 8, 1965 LFS Co. Ltd. entered into an agreement (Exhibit P12) with Shin Fung Trading Co. Ltd. (referred to as SFT Co. Ltd.) for the extraction and sale of timber in the aforesaid area. Plaintiff played no part in respect of this agreement (Exhibit P12).

For the purpose of this appeal it has been conceded that SF (B) Co., Shin Fung Trading Co. and SFT Co. Ltd. are one and the same concern. However, in respect of the defendant firm and LFS Co. Ltd. they are said to be different entities — one being a partnership and the other a limited company. This was also the finding of the learned judge who further held that there was no assignment from the partnership to the company. However, it is not in dispute that the controlling shareholders of the partnership and the company are the same persons. Hence, when agreement (Exhibit P12) was executed references were expressly made to the agreement (Exhibit P2) in clause 11 and to the partnership in clause 1 as "its associate company" which "held the timbers licence described as No. T/0015". Clause 11 provides in no uncertain terms that: —

"This agreement effects immediately from date hereof, and the previous agreement dated July 10, 1962 and all its supplements which entered between Lian Fatt Sawmill Co., and Shin Fung (B) Co. alias Shin Fung Trading Co. Ltd. shall cease to effect from this date."

From 1962 to 1965 logs were extracted under forest licence No. T/0015 by the workers of the partnership and not by SF (B) Co. pursuant to agreement (Exhibit P2). Hence, the learned judge in the earlier case held that there was no breach of contract by defendant in respect of the commission agreement (Exhibit P1) or the 1962 agreement (Exhibit P2). With respect, I am unable to agree with the learned judge. Provided the plaintiff was instrumental in getting the defendants and the Korean concern to execute an agreement surely it was no concern to him, indeed he had no control over the business, how the timber was to be extracted and sold after the commission agreement (Exhibit P1) was signed. In so far as plaintiff is concerned the agreement (Exhibit P2) is still binding on SF (B) Co. If SF (B) Co. failed to carry out their part of the bargain under (Exhibit P2) it was up to the partnership to seek the appropriate remedy. Plaintiff had done all he could to bring them together. The liabilities of the partnership and the plaintiff have been set out previously quite clearly in clauses 1 and 2 of the commission agreement (Exhibit P1).

The question of different identities also arose in the unreported case of *Hock Hin (Muar) Rubber Co. Sdn. Bhd.* v. *Malayan Insurance Co. Incorporated*[1] in respect of an application under Order 14 before Chang Min Tat J. There while Khoo Poh Chew was the managing partner of a partnership ("Hoe Lee Estate"), dealing in rubber plantation business, two fires to its smoke-houses occurred and the insurers concerned paid the claims. Later, as managing director of plaintiff company, engaged in similar business, Khoo Poh Chew signed a proposal form for insurance against fire. Plaintiff company claimed damages for fire to its smoke-houses. The insurer resisted the claim on the ground that the policy was obtained by a representation which was false and material to the issuance of the policy. The argument was that Khoo Poh Chew and the company are separate entities. Therefore, if there was any representation it was by Khoo Poh Chew in his personal capacity but not by plaintiff company. In dismissing the application the learned judge asked himself: —

"The question here was whether Khoo Poh Chew as the managing partner could be separated as a different entity from Khoo Poh Chew as managing director of the plaintiff company and the executive who filled in the proposal form."

He answered in this way: —

"The question must be considered in the local setting where except as to the limitation of liability and the springing into existence of a legal entity, a private limited company was not very much different from a partnership, more so when the managing director was the same person as the managing partner."

It is true that the present case has nothing to do with insurance which involves the question of *uberrimae fidei*. Nevertheless, with respect, I agree with the view of the learned judge that considering the local setting a private limited company is not very much different from a partnership, particularly when the two have the same controlling shareholders. In my view in the present case there already exists a legally binding contract except as to the exact amount of commission. The sanctity of a contract should not be obstructed by an ingenious group in meeting their obligation.

It is to be observed that the forest licence was still in the name of the partnership when the agreement (Exhibit P12) was executed. The implication is that there must have been some sort of understanding between the two legal entities otherwise the agreement (Exhibit P12) would not be worth the paper it is written on. The company had no forest licence to extract timber. Neither had the company any concession area from which to extract timber. How was it possible for a company purportedly a different entity from a partnership to use the latter's forest licence to extract timber from the latter's concession area and to abrogate the agreement entered into by the latter? All these were only possible on the assumption that the partnership had impliedly assigned its rights to the company. Since the controlling shareholders of both the partnership and the company are the same persons they could bind both the partnership and the company by their action. Although the two are different entities the controlling shareholders in fact do not seem to distinguish one from the other. The agreement (Exhibit P12) is as good as any assignment. It seems to me the assignment is absolute. The language is immaterial so long as the meaning is clear. This is a case where one must look into the conduct of those persons who run both the company and the partnership. The forest licence was under the name of the partnership until

December 31, 1965 so also was the concession area. Without these how could the company enter into the agreement (Exhibit P12) which it had entered into with SFT Co. Ltd. on June 8, 1965 to extract and sell timber.

It is interesting to note that at page 173 of the Appeal Record the balance sheets of the LFS Co. Ltd. as at June 30, 1965 under sundry creditors shows $16,598.41 is due to Tang Chiok Sing & Sons. This same sum again appears at page 174 of the said record as commission on sale of logs under the trading account for the same period. Plaintiff, therefore, submitted that the company had in fact stepped into the shoes of the partnership and assumed the liabilities of the partnership. He relies for his commission on the balance sheets for 1965 and 1966.

By a letter dated February 12, 1966 (page 184 of the Appeal Record) the defendants wrote to SFT Co. Ltd. demanding for payment of outstanding debt. Curiously enough, it mentioned the agreement dated June 8, 1965 (Exhibit P12) to be between defendants and SFT Co. Ltd. As late as March 6, 1967 LFS Co. Ltd. was still using the letterhead of defendant firm in a letter to the Section Forest Officer, Miri giving the impression that the partnership and the company were one. In his evidence (pages 45-48 of the Appeal Record) the Section Forest Officer stated that the forest licence was not transferable but if the firm was converted into a limited company the new forest licence would be issued to this new company. During cross-examination he made clear that forest licence No. T/0015 was issued to the company because it was a successor to the partnership. The licence was not transferable except with the permission of the Conservator of Forests.

A perusal of the Memorandum and Articles of Association of the company would make the position clear. Clause 3 of the Memorandum of Association of the company defines the objects for which the company is established. One of the objects under sub-clause (cc) of clause 3 provides as follows: —

"To amalgamate or unite with or absorb into the Company any other Company or Association or business, or the members of any other Company or Association wherever formed for objects similar, analogous or subsidiary to any of the objects of the Company or carrying on any business capable of being conducted so as directly or indirectly to benefit the Company, and to form, establish and bring out and assist in the formation or establishment of any such Company or Association and to acquire, hold and deal in shares or interests therein."

Having dealt with the objects the same clause 3 declares that: —

"... the word "Company" in this clause shall be deemed to include any partnership or other body of persons whether incorporated or not incorporated and whether domiciled in Brunei, North Borneo, Sarawak or elsewhere and none of the sub-clauses of this clause or the objects therein specified or the powers thereby conferred shall be deemed subsidiary or auxiliary merely to the objects mentioned in the first sub-clause of this clause the intention being that the objects specified in each sub-clause of this clause shall, except where otherwise expressed in such sub-clause, be independent main objects and shall be in no wise limited or restricted by reference to or inference from the terms of any other sub-clause or the name of the Company, but the Company shall have full power to exercise all or any of the powers conferred by any part of this clause in any part of the world and notwithstanding that the business undertaking property or acts proposed to be transacted, acquired, dealt with or performed do not fall within the objects of the first sub-clause of this clause."

The object of the company was, to use the words of the Memorandum of the Association, to absorb into the company members of any other company or association with similar objects to the company. Definition of "company" in clause 3 of the Memorandum includes any partnership. The intention was clearly to bring in the controlling partners. This also explains how it is possible for the company to enter into the agreement (Exhibit P12). Plaintiff has proved that the partnership has impliedly permitted the company to take over its concession area and to use its forest licence and to abrogate an agreement (Exhibit P2). By doing so the partnership has breached the commission agreement (Exhibit P1) by making it impossible for plaintiff to claim the commission to which he has rightly earned. Only the amount of commission is to be worked out. This commission agreement (Exhibit P1) is unlike an estate agency agreement in that the exact amount of commission arises only after extraction and sale of timber resulting in profit. Such profit could not be expected immediately hence the period of ten years is specified. But, once he has brought the parties together he could reasonably expect some commission in the course of time.

The learned judge is of the view that *Thomas W. Rhodes* v. *George P. Forwood & Walter Paton*[2] and *Turner* v. *Goldsmith*[3] have no application because the partnership has not terminated the commission agreement (Exhibit P1). Since clause 11 of agreement (Exhibit P12) terminates agreement (Exhibit P2) the commission agreement Exhibit P1) has been left in a twilight zone. The learned judge ought to have held that there was a breach of the commission agreement (Exhibit P1) by the partnership as the agreement (Exhibit P12) could not have been executed without the knowledge and consent of the partnership. As I have said earlier it is this conduct of the controlling shareholders of the partnership and the company that one ought to look into. Neither the partnership nor the company could function without them.

Cases involving agent's commission are always difficult to decide. In general, the principal is only bound to pay commission if and when the agent has brought about the intended result. In the leading case of *Luxor (Eastbourne) Ltd. & Ors.* v. *Cooper*[4] one P authorised A to negotiate for the sale of certain properties and promised him a commission of £10,000 "on completion of the sale" if a price of £175,000 were produced. A obtained an offer to purchase at the price and the offer was accepted by P but "subject to contract." Subsequently, P refused to proceed further with the transaction. A was unable to recover the commission since there had been no completion of sale. The formula "subject to contract" postponed the creation of a binding contract.

In that case Lord Russell of Killowen, dealing with the general principles governing commission contracts, said: —

"(1) Commission contracts are subject to no peculiar rules or principles of their own; the law which governs them is the law which governs all contracts and all questions of agency.

(2) No general rule can be laid down by which the rights of the agent or the liability of the principal under commission contracts are to be determined. In each case these must depend upon the exact terms of the contract in question, and upon the true construction of those terms. And (3) contracts by which owners of property, desiring to dispose of it, put it in the hands of agents on commission terms, are not (in default of specific provisions) contracts of employment in the ordinary meaning of those words. No obligation is imposed on the agent to do anything. The contracts are merely promises binding on the principal to pay a sum of money upon the happening of a specified event, which involves the rendering of some service by the agent."

The principal's liability to pay commission depends on whether, on the proper construction of the contract between him and the agent, the event has happened upon which the commission is to be paid. This sentiment is expressed in many English cases, such as, *Midgley Estates Ltd.* v. *Hand;*[5] *Ackroyd & Sons* v. *Hasan;*[6] *A.L. Wilkinson Ltd.* v. *Brown*[7] and *Jaques* v. *Lloyd D. George & Partners Ltd.*[8]

In *Midgley's case*[5] the bargain was that the commission was to be payable as soon as the purchaser introduced by the agent "shall have signed a legally binding contract within a period of three months." In allowing the appeal the Court of Appeal held that the agent satisfied the conditions and was entitled to the commission notwithstanding the ultimate failure of the sale owing to the financial collapse of the purchaser. The specified event was the signature of the contract and that event happened. As Harman L.J. remarked in *Wilkinson's case*[7] at page 197 that: —

"It comes to this in the end, that before you find the commission payable, you must be satisfied that the condition on which it is payable has been fulfilled. There is nothing more in it than that."

This is clearly so as Jenkins L.J. in *Midgley's case*[5] stated at page 436 that: —

"...this does not mean that the contract, if its terms are clear, should not have effect in accordance with those terms, even if they do involve the result that the agent's commission is earned and becomes payable although the sale in respect of which it is claimed, for some reason or another, turns out to be abortive."

There is of course nothing to prevent the principal from terminating the contract at any time before the agent has accomplished what he undertook to do. This was what precisely happened in *Luxor's case.*[4] The present case under appeal can be distinguished in that that partnership and the Korean concern have signed a perfectly legal binding contract. Plaintiff has fulfilled his obligation by bringing the two together resulting in the execution of an agreement (Exhibit P2). Only the exact amount of commission has to be worked out. The company could not have executed the agreement (Exhibit P12) without the consent of the partnership. As the controlling shareholders of the partnership and the company are the same persons this could easily be accomplished as it has in fact been accomplished. In *Luxor's case*[4] Viscount Simon L.C. dealing with implied terms, made this pertinent observation: —

"...in contract made with commission agents there is no justification for introducing an implied term unless it is necessary to do so for the purpose of giving to the contract the business effect which both parties to it intended it should have."

In *Reigate* v. *Union Manufacturing Co. (Ramsbottom)*[9] Scrutton L.J. said almost the same thing in these words: —

"The first thing is to see what the parties have expressed in the contract; and then an implied term is not to be added because the court thinks it would have been reasonable to have inserted it in the contract. A term can only be implied if it is necessary in the business sense to give efficacy to the contract; that is, if it is such a term that it can confidently be said that if at the time the contract was being negotiated some one had said to the parties, "What will happen in such a case," they would both have replied, "Of course, so and so will happen; we did not trouble to say that; it is too clear." Unless the court comes to such a conclusion as that, it ought not to imply a term which the parties themselves have not expressed."

There would be no problem if the partnership has been converted into a limited company. Instead, a new company was incorporated by the same partners of the partnership. Even then the partner must have known that the company could not function without acquiring the partnership forest licence and concession area. In effect, the company acted as if it were a sub-contractor even though nothing was said about it. Whether the partnership of the company makes profit the same controlling shareholders would benefit. They would have less profit to share if the partnership makes profit as it would have to pay plaintiff commission. Therefore, it is said that the partnership has made no profit. In such circumstances it is necessary in the business sense to give efficacy to the commission agreement (Exhibit P1) that a term ought to be implied that the partnership ought not by default on its part to deprive plaintiff of his commission.

It is true that the learned judge held that SFT Co. Ltd. extracted timber pursuant to agreement (Exhibit P12) which was made with the company and that plaintiff was not responsible for the conclusion of the contract, therefore plaintiff was not entitled to the commission under this agreement. With respect to the learned judge he has failed to consider the conduct of the controlling shareholders of both the partnership and the company. Further, he has overlooked the facts that agreement (Exhibit P12) could only be effective by incorporating agreement (Exhibit P2) into agreement (Exhibit P12) and that the forest licence and concession area were still under the name of the partnership when the agreement (Exhibit P12) was signed. The company could only enter into such a contract by reason of one or a combination of these factors, namely, (1) that the company is the successor of the partnership; (2) that there was an implied assignment; (3) that the company is a sub-contractor. Clearly, the defendants are taking advantage of a device to try to evade payment of commission. Such a device should not be allowed to defeat the claim of an innocent party. Under the circumstances it would be inequitable for the partnership to refuse to pay commission.

As to quantum the parties are agreed with the assessment of the learned judge, that is $21,866.96 for breach of express term of contract and $5,850.97 for breach of implied term of contract. Plaintiff is also to get his costs of the re-trial plus interest on the judgment sum at 6% per annum from the date of judgment to date of payment. In my view, plain-

tiff would be entitled to $5,850.97 in this case. There would also be a declaration that plaintiff is entitled to recover from the defendant firm all further sums which plaintiff may receive by way of commission up to June 29, 1972, based on the balance sheets of the company filed with the Registrar of Companies. The appeal is accordingly allowed with costs here and below.

Suffian L.P. and **Wan Suleiman F.J.** concurred

Solicitors: *Tang & Co.; Battenberg & Talma.*

RE DATUK JAMES WONG KIM MIN; MINISTER OF HOME AFFAIRS, MALAYSIA & ORS. v. DATUK JAMES WONG KIM MIN

[F.C. (Suffian L.P., Lee Hun Hoe C.J. (Borneo) and Wan Suleiman F.J.) August 24, 1976]

[Kuching — Federal Court Civil Appeal No. 146 of 1975]

Administrative Law — Habeas Corpus — Person detained under Preservation of Public Security Ordinance, Sarawak, 1962 — Ordinance declared Federal Law — Whether operation of law extended throughout Malaysia — Whether Minister has power to order a person to be detained outside Sarawak — Whether order can be made against person who is outside Sarawak — Prerogative Remedies Ordinance (Cap. 47) — Preservation of Public Security Ordinances 1962, s. 4 — Malaysia Act, 1963, ss. 73(3) and 74 — Federal Constitution, Article 159A.

This was an appeal from the decision of Seah J. ([1975] 2 M.L.J. 244) in which he held that an order of detention made against the respondent under the Preservation of Public Security Ordinance, 1962, was unlawful, as at the time when the detention order was made by the Federal Secretary, Sarawak, the detainee was not in Sarawak.

Held, dismissing the appeal: (1) although the Preservation of Public Security Ordinance 1962 of Sarawak was declared to be a Federal Law it continued to have effect only in Sarawak;

(2) neither the Minister nor the Federal Secretary acting on his behalf could order a person to be detained outside Sarawak;

(3) the Minister and the Federal Secretary had power to make a detention order in respect of a person who when the order was made was outside Sarawak but the detention order could only have effect when the person concerned sets foot in Sarawak.

Cases referred to:-

(1) *Assa Singh* v. *Mentri Besar, Johore* [1969] 2 M.L.J. 30.

(2) *Ex parte Johannes Choeldi & Ors.* [1960] M.L.J. 184.

(3) *Chia Khin Sze* v. *Mentri Besar, Selangor* [1958] M.L.J. 105.

(4) *Aminah* v. *Superintendent of Prison, Pengkalan Chepa, Kelantan* [1968] 1 M.L.J. 92.

(5) *Macleod* v. *Attorney-General of New South Wales* [1891] A.C. 455, 457-458.

(6) *Croft* v. *Dunphy* [1933] A.C. 156, 165.

(7) *Wallace Brothers & Co. Ltd.* v. *Commissioner of Income Tax, Bombay* A.I.R. 1948 P.C. 118; (1948) 75 I.A. 86, 98 (P.C.).

(8) *Re Choo Jee Jeng* [1959] M.L.J. 217.

(9) *Karam Singh* v. *Mentri Hal Ehwal Dalam Negeri* [1969] 2 M.L.J. 129.

FEDERAL COURT.

Datuk Haji Abdullah Ngah, Senior Federal Counsel (*Zaki bin Tun Azmi* Federal Counsel with him) for the appellant.

Datuk David Marshall (*K.C. Fong* with him) for the respondent.

Suffian L.P.: On October 30, 1974, Datuk James Wong Kim Min, the applicant in the lower court and respondent before us (the detainee), was arrested by police officers at his home in Sarawak. He was arrested under regulation 7(1) of the Preservation of Public Security Regulations. After his arrest, he was escorted to Peninsular Malaysia and held in Kuala Lumpur. On December 28, 1974, a detention order addressed to the Superintendent of Prison, Taiping, Perak, and made by the Federal Secretary, Sarawak, under paragraph (1) of regulation 2 of the Preservation of Public Security (Detention) Regulations, 1962, which I shall refer to simply as PPSR, was served on him in Kuala Lumpur.

On January 3, 1975, the Federal Secretary, Sarawak, signed a Removal Order under paragraph 5 of regulation 2 of PPSR directing that the detainee be removed from Taiping Prison, Perak, to Kamunting Detention Camp, Perak, Peninsular Malaysia.

It will be noted that when the detention order was made, the detainee was outside Sarawak and he has throughout been detained outside Sarawak.

The detainee applied *ex parte* for a writ of *habeas corpus* under section 3 of the Prerogative Remedies Ordinance (Sarawak Cap. 47), citing as respondents the Minister of Home Affairs, Malaysia, the Federal Secretary, Sarawak, and the officer in charge of Kamunting Detention Centre, Taiping, Perak. (These respondents are appellants before us).

Formal hearing of the application began before Seah J. in Kuching on March 3, 1975.

Datuk Marshall submitted that the detention was unlawful and that the application should be allowed on ten grounds, of which the second ground reads:—

"(2) Assuming that the Federal Secretary, Sarawak had the authority to issue such a Detention Order, the PPSR being an exclusively Sarawak law, could only authorise him to detain a person who was in Sarawak at the time when the said Order was made."

The learned trial judge dealt only with ground 2. He held that the Preservation of Public Security Ordinance (PPSO) enacted by the Sarawak Legislature and PPSR made under it before Malaysia Day were before Malaysia Day limited in their operation to the colony of Sarawak only; that after Malaysia Day they still had no legal force outside the state of Sarawak although Sarawak is one of the component states of Malaysia; that at the time when the detention order was made by the Federal Secretary, Sarawak, the detainee was not in Sarawak but in Kuala Lumpur; and that therefore the order of detention was unlawful.

At the conclusion of the hearing on March 7, 1975, the learned judge delivered a brief oral judgment announcing his decision and ordering that the detainee be produced before the court on Monday, March 10, 1975, at 2.15 p.m. to be released. The detainee was duly produced before the court and he was formally released.

In his grounds since reported at [1975] 2 M.L.J. 244 the learned trial judge said that in view of his